

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 21-483
Table of Allotments,)	RM-11913
FM Broadcast Stations)	
(Hamilton, Texas))	
)	
Application for Construction Permit to Modify)	File No. 107517
Station KRNR(FM), Goldthwaite, Texas)	Facility ID No. 198798
)	
Application for a New FM Station at)	File No. 144065
Hamilton, Texas)	Facility ID No. 761268
)	
Application for Construction Permit to Modify)	File No. 138089
Station KNUZ(FM), San Saba, Texas)	Facility ID No. 65315

REPORT AND ORDER

Adopted: May 25, 2022

Released: May 26, 2022

By the Assistant Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. We have before us a *Notice of Proposed Rulemaking and Order to Show Cause (NPRM)*¹ issued in response to a petition for rulemaking (Second KRNR Petition for Rulemaking) filed by B Plus Broadcasting, LLC (B Plus), proposing the allotment of FM Channel 263A at Hamilton, Texas, and modifying the licensed facilities of Station KRNR(FM), Goldthwaite, Texas (KRNR) and Station KNUZ(FM), San Saba, Texas (KNUZ). B Plus is the licensee of KRNR. KNUZ is licensed to S Content Marketing, LLC (S Content). For the reasons discussed below, we: (1) modify the KNUZ license to specify operation on Channel 291A in lieu of Channel 224A at San Saba, Texas; (2) modify the KRNR license to specify Channel 224A in lieu of 263A at Goldthwaite, Texas; (3) grant the above-captioned modification application, filed by B Plus on March 10, 2020 (KRNR Modification Application); (4) dismiss the above-captioned modification application, filed by S Content on March 8, 2021 (Second KNUZ Modification Application), and associated pleadings;² and (5) create a new vacant FM allotment on Channel 263A at Hamilton, Texas.

II. BACKGROUND

2. The *NPRM* proposes to amend the FM Table of Allotments by allotting Channel 263A at Hamilton, Texas, as the community's second local service. To accommodate the proposed new Hamilton allotment, we issued an *Order to Show Cause* to S Content as to why its license for Station KNUZ should

¹ *Hamilton, Texas*, Notice of Proposed Rulemaking and Order to Show Cause, MB Docket No. 21-483, DA 21-1587 (MB 2021).

² On April 8, 2021, B Plus filed an informal objection to the Second KNUZ Modification Application (KNUZ Informal Objection). On April 21, 2021, S Content filed an Opposition to the KNUZ Informal Objection (KNUZ Opposition). On April 26, 2021, B Plus filed a reply to the KNUZ Opposition (KNUZ Reply).

not be modified to specify operation on Channel 291A in lieu of Channel 224A at San Saba, Texas.³ Furthermore, to facilitate the allotment of Hamilton, B Plus proposes to operate KRNR on Channel 224A in lieu of Channel 263A, which is currently reserved for KNUZ.⁴ S Content never operated KNUZ on Channel 224A but continued to use its former channel, Channel 291A.⁵ B Plus filed comments supporting the allotment change proposed in the *NPRM*. No other comments were received.

3. B Plus argues that channel re-assignment in this case would result in a more “fair, efficient and equitable” distribution of radio service.⁶ Specifically, B Plus states the allotment of Channel 263A at Hamilton, Texas would result in a preferential arrangement of allotments because it would provide a second local service (and first nighttime local service) to Hamilton, Texas, a licensable community with a population over 3,000.⁷ In addition, B Plus asserts, KRNR, as modified, would cover 63 more people with its 60 dBu signal contour on Channel 224A than on Channel 263A and would provide a new second service to 246 people in a “gray area” (i.e., an area having only one other reception service).⁸ In contrast, according to B Plus, the proposed KNUZ facility would provide 60 dBu coverage to an additional 559 people on Channel 224A, only 8 of which reside in a gray area.⁹ B Plus also argues that S Content’s failure to construct the facility on Channel 224A militates in favor of modifying the KNUZ license to remain on Channel 291A to prevent “spectrum warehousing” of both channels.¹⁰ B Plus also cites to Commission precedent that favors the establishment of a new local service over the modification of an existing facility.¹¹ For these reasons, B Plus concludes, that the proposed changes would be a preferential arrangement of allotments as compared to KNUZ’s reserved allotment on Channel 224A.¹²

III. DISCUSSION

4. Section 316(a) of the Communications Act of 1934, as amended, (Act) permits us to modify the license or construction permit if such action is in the public interest.¹³ In this case, modifying the KNUZ license to specify Channel 291A, San Saba, would accommodate the allotment of Channel

³ *NPRM* at 4.

⁴ *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Mullin, Texas)*, Report and Order, 32 FCC Rcd 1848 (MB 2017) (*KNUZ Report and Order*) (assigning KNUZ to Channel 224A in lieu of Channel 291A at San Saba, Texas). On March 10, 2017, the Bureau granted the associated modification application (Application File No. BPH-20160601ABG).

⁵ See Application File No. BPH-20160601ABG.

⁶ Second KRNR Petition for Rulemaking at 3 (citing 47 U.S.C. § 307(b)).

⁷ Second KRNR Petition for Rulemaking at 3-5. The FM Allotment Priorities are (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC.2d 88, 91-92, paras. 7-13 (1982). B Plus states that Hamilton is a community for allotment purposes because the Commission has previously allotted an FM channel to this community and Hamilton has other indicia of community status, such as a local government and schools. Second KRNR Petition for Rulemaking at 4.

⁸ Second KRNR Petition for Rulemaking at 3-5.

⁹ *Id.* at 3.

¹⁰ *Id.* at 5-7; KRNR Petition for Reconsideration at 6. The Second KNUZ Modification Application, filed by S Content on March 8, 2021, seeks a second construction permit to operate KNUZ on Channel 224A and thus is mutually exclusive with the KRNR Modification Application.

¹¹ KRNR Petition for Reconsideration at 5 (citing *Andalusia, Alabama*, Report and Order, 49 FR 32201, 32202, para. 8 (MMB 1984) (“... [W]hen a pending channel assignment and a pending application are in technical conflict ... the proposed channel assignment would be favored since it would represent a new service.”)).

¹² Second KRNR Petition for Rulemaking at 5.

¹³ 47 U.S.C. § 316(a).

263A at Hamilton, Texas as the community's second local service.¹⁴ In addition, B Plus states that its proposal will provide a new second service to 246 people in a "gray area." A staff engineering analysis reveals that Channel 263A can be allotted to Hamilton in conformity with the Rules at reference coordinates 31-39-48.1 NL and 98-21-29.4 WL.¹⁵ As required by the Commission's *Circleville* policy, B Plus commits to reimbursing S Content for the reasonable costs incurred in connection with the proposed channel change.¹⁶

5. To accommodate the creation of a new FM station at Hamilton, Texas, we conclude that the public interest would be served by adopting the modifications requested in the B Plus proposal.¹⁷ Accordingly, we: (1) modify the KNUZ license to specify operation on Channel 291A in lieu of Channel 224A at San Saba, Texas;¹⁸ (2) modify the KRNR license to specify operation on Channel 224A in lieu of 263A at Goldthwaite, Texas; (3) grant the KRNR Modification Application; (4) dismiss the Second KNUZ Modification Application and all associated pleadings as moot; and (5) create a new vacant allotment on Channel 263A at Hamilton, Texas.

6. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,¹⁹ do not apply to a rulemaking proceeding to amend the FM Table of Allotments, section 73.202(b) of the Rules.²⁰ This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995.²¹ In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002.²²

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, that the petition for rulemaking filed by B Plus Broadcasting, LLC, on April 27, 2021, IS GRANTED.

8. IT IS FURTHER ORDERED that, pursuant to 47 U.S.C. § 316(a) and 47 CFR § 1.87, the license of KNUZ(FM), San Saba, Texas, IS MODIFIED to specify operation on Channel 291A in lieu of Channel 224A.

9. IT IS FURTHER ORDERED that the license of station KRNR(FM), Goldthwaite, Texas, IS MODIFIED to specify operation on Channel 224A in lieu of Channel 263A.

10. IT IS FURTHER ORDERED that the application for modification of station KRNR(FM),

¹⁴ Hamilton's first local service is provided by KCLW(AM), Hamilton, Texas, licensed to Faith in Christ Mission.

¹⁵ See 47 CFR § 73.207. The Longley-Rice based 70 dBu "mean occurrence contour" covers 100% of Hamilton, Texas.

¹⁶ See *Circleville, Ohio*, Second Report and Order, 8 FCC 2d 159 (1967). On October 5, 2021, B Plus filed a supplement to the Second KRNR Petition for Rulemaking (*Circleville* Supplement) and request for leave to file the *Circleville* Supplement.

¹⁷ We agree with B Plus that Hamilton, Texas, is a community for allotment purposes.

¹⁸ As noted in the *NPRM*, because S Content did not file any written statement by the deadline established in the *NPRM*, it is deemed to have consented to this modification. *NPRM* at 5, para. 12.

¹⁹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

²⁰ 47 CFR § 73.602(b).

²¹ See 44 U.S.C. §§ 3501-3520.

²² See 44 U.S.C. § 3506(c)(4).

Goldthwaite, Texas, filed by B Plus Broadcasting, LLC, on March 10, 2020 (Application File No. 107517), IS GRANTED.

11. IT IS FURTHER ORDERED that the application for modification of station KNUZ(FM), San Saba, Texas, filed by S Content Marketing, LLC, on March 31, 2021 (Application File No. 138089), and associated pleadings, IS DISMISSED.

12. IT IS FURTHER ORDERED that, pursuant to authority found in 47 U.S.C. sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(1), 303(g), (r), and 307(b) and sections 0.61, 0.204(b), and 0.283 of the Rules, 47 CFR §§ 0.61, 0.204(b), and 0.283, effective July 11, 2022, the FM Table of Allotments, 47 CFR § 73.202(b), IS AMENDED, with respect to the community listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Hamilton, Texas	263A

A filing window for Channel 263A at Hamilton, Texas, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

13. IT IS FURTHER ORDERED that the Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see U.S.C. § 801(a)(1)(A).

14. IT IS FURTHER ORDERED that this proceeding IS TERMINATED. For further information concerning this proceeding, contact Nazifa Sawez, Media Bureau (202) 418-7059.

FEDERAL COMMUNICATIONS COMMISSION

Nazifa Sawez
Assistant Chief, Audio Division
Media Bureau